



PUBLIC NOTICE

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MEDIA BUREAU ANNOUNCES THRESHOLD QUALIFICATIONS WINDOW FOR TRIBAL ALLOTMENT AT EAGLE BUTTE, SOUTH DAKOTA

November 18, 2016 Deadline Established for FCC Form 301s and Threshold Qualifications Showings

The Media Bureau (Bureau) announces that it is opening today a Threshold Qualifications Window (TQ Window) during which qualified Tribal applicants may file applications for the Channel 228C1 Tribal Allotment at Eagle Butte, South Dakota (Eagle Butte Tribal Allotment).¹ The 30-day window will close on November 18, 2016. The TQ Window is being opened pursuant to procedures announced in the Third Report and Order in *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures (Rural Radio)*.²

The Cheyenne River Sioux Tribe (CRST) previously submitted an FCC Form 301 application with its petition for the Eagle Butte Tribal Allotment.³ The Bureau found that CRST satisfied the eligibility criteria for this Tribal Allotment.⁴ During the TQ Window, any other eligible Tribe or Tribal entity may file a competing FCC Form 301 application for the Eagle Butte Tribal Allotment, which must include a threshold qualifications showing. This showing must demonstrate that the applicant Tribe or Tribal entity would have qualified⁵ to add the Eagle Butte Tribal Allotment to the Table of FM Allotments.⁶ Specifically, a Tribal applicant must demonstrate that it meets all of the following eligibility criteria for grant of the Tribal Priority at the allotment stage:

¹ *Eagle Butte, South Dakota*, Report and Order, DA 16-1007, RM-11770 (MB rel. Sept. 2, 2016), 81 Fed Reg. 65304 (Sept. 22, 2016) (*Eagle Butte R&O*).

² See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Third Report and Order, 26 FCC Rcd 17642, 17645- 50, paras. 7-15 (2011) (*Rural Third R&O*). See also 47 CFR § 73.3573(f)(6).

³ File No. BNPH-20160512ABE.

⁴ *Eagle Butte R&O*, para. 3.

⁵ See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, First Report and Order and Further Notice of Proposed Rule Making, 25 FCC Rcd 1583, 1588-89, 1596-97, paras. 9-10, 26-27 (2010) (*Rural First R&O*).

⁶ 47 CFR § 73.202.

- (A) The applicant is either a federally recognized Tribe or Tribal consortium, or an entity 51 percent or more of which is owned or controlled by a Tribe or Tribes. Qualifying Tribes or Tribal entities must be those at least a portion of whose Tribal Lands lie within the principal community contour of the proposed allotment. Although the 51 or greater percent Tribal control threshold need not consist of a single Tribe, the qualifying entity must be 51 percent or more owned or controlled by Tribes at least a portion of whose Tribal Lands lie within the proposed allotment's principal community contour;
- (B) (1) At least 50 percent of the area within the proposed principal community contour is over that Tribe's Tribal Lands, or (2) the proposed principal community contour (a) encompasses 50 percent or more of that Tribe's Tribal Lands, (b) serves at least 2,000 people living on Tribal Lands, and (c) the total population on Tribal Lands residing within the proposed allotment's service contour constitutes at least 50 percent of the total covered population⁷ (and, in the case of either (B)(1) or (B)(2), the proposed allotment's principal community contour does not cover more than 50 percent of the Tribal Lands of a Tribe that is not a party to the application);⁸
- (C) The proposed community of license must be located on the applicant's Tribal Lands; and
- (D) The proposed service must constitute first or second aural (reception) service, or first local Tribal-owned commercial transmission service at the proposed community of license.⁹

Any Tribe or Tribally controlled entity interested in filing a competing application and threshold qualifications showing **must contact** James Bradshaw at James.Bradshaw@fcc.gov **no later than November 18, 2016, to make arrangements for electronic filing of a complete FCC Form 301 application for new station construction permit in CDBS.**

CRST, as the original allotment proponent, **must submit** a written notification during the TQ Window. The notification must include an expression of continuing interest in the Eagle Butte Tribal Allotment, and **must include** a request that the Bureau either (1) process its previously filed FCC Form 301 application immediately; or (2) postpone processing of its application.

In the event that only one acceptable application is on file at the close of the TQ Window, that application will be processed as a singleton. If no competing application is filed during the TQ Window and if CRST requests that the Bureau postpone processing of its application, the Eagle Butte Tribal Allotment will be offered in a future auction. Only threshold qualified Tribal applicants may bid on that allotment during this first auction. If two or more acceptable applications are on file at the close of the TQ Window, those applicants will be afforded an opportunity to negotiate a settlement (including a time-sharing agreement) or *bona fide* merger to resolve the mutual exclusivity between their applications.

⁷ For purposes of qualifying for the Tribal Priority at the FM allotment stage, the service contour is the class reference contour as set forth in 47 CFR § 73.211(b). This is the 1 mV/m (60 dBμ) contour.

⁸ To the extent that a Tribe lacks Tribal Lands, the applicant may establish eligibility for waiver of the above-listed tribal land coverage provisions, by demonstrating a geographic area identified with the Tribe. *See Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556, 2561-63, paras. 9-11 (2010) (*Rural Second R&O*). Likewise, we will consider requests for waiver of the other requirements where appropriate.

⁹ *See Rural First R&O*, 25 FCC Rcd at 1596-97, paras. 26-27; *Rural Second R&O*, 26 FCC Rcd at 2561-63, 2586-87, paras. 9-11, 59. *See also* 47 CFR § 73.3573, Note 5.

Barring such a settlement or merger, the Eagle Butte Tribal Allotment will be offered at auction, with only the threshold qualified Tribal applicants allowed to participate.¹⁰

CRST's written notification shall be submitted, in triplicate, to the Office of the Secretary, 445 12th Street, S.W., Washington, DC 20554, with a courtesy copy mailed or delivered to Thomas Nessinger, Audio Division, Media Bureau, 445 12th Street, S.W., Room 2-B450, Washington, DC 20554, or e-mailed to Thomas.Nessinger@fcc.gov. Applications and written notification must be filed no later than 6:00 p.m., Eastern Time, on November 18, 2016.

For additional information, contact Lisa Scanlan, Thomas Nessinger, or Adrienne Denysyk of the Audio Division at (202) 418-2700.

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¹⁰ See generally *Rural Third R&O*, 26 FCC Rcd at 17646-48, paras. 8-9.